The Senate Insurance and Labor Committee offered the following substitute to HB 412:

A BILL TO BE ENTITLED

AN ACT

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to provide definitions; to provide for applicability; to provide for the registration of certain contracting entities; to prohibit access to a provider's health care services and contractual discounts by certain contracting entities under certain circumstances; to provide certain requirements for contracting entities; to provide for the rights and responsibilities of third parties; to prohibit unauthorized access to provider network contracts; to provide for enforcement; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by adding a new chapter to read as follows:

"CHAPTER 20C

33-20C-1.

As used in this chapter, the term:

(1) 'Commissioner' means the Commissioner of Insurance.

(2) 'Contracting entity' means any person or entity that enters into direct contracts with providers for the delivery of health care services in the ordinary course of business.

(3) 'Control' and 'under common control with' mean possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity through the ownership of 50 percent or more of the voting securities of the entity.

(4) 'Covered individual' means an individual who is covered under a health insurance plan.

(5) 'Department' means the Department of Insurance.

(6) 'Health care services' means the examination or treatment of persons for the prevention of illness or the correction or treatment of any physical or mental condition resulting from illness, injury, or other human physical problem and includes, but is not limited to:

(A) Hospital services which include the general and usual care, services, supplies, and equipment furnished by hospitals;

(B) Medical services which include the general and usual services and care rendered and administered by doctors of medicine, doctors of dental surgery, and doctors of podiatry; and

(C) Other health care services which include appliances and supplies; nursing care by a registered nurse or a licensed practical nurse; care furnished by such other licensed practitioners as may be expressly approved by the board of directors from time to time; institutional services, including the general and usual care, services, supplies, and equipment furnished by health care institutions and agencies or entities other than hospitals; physiotherapy; ambulance services; drugs and medications; therapeutic services and equipment, including oxygen and the rental of oxygen equipment; hospital beds; iron lungs; orthopedic services and appliances, including wheelchairs, trusses, braces, crutches, and prosthetic devices, including artificial limbs and eyes; and any other appliance, supply, or service related to health care.

(7) 'Health insurance plan' means any hospital and medical expense incurred policy, nonprofit health care service plan contract, health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes medical or health care services, whether by insurance or otherwise. The term shall not include any of the following: coverage only for accident or disability income insurance; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; automobile medical payment insurance; workers' compensation insurance; credit-only insurance; coverage for on-site medical clinics; coverage similar to the foregoing as specified in federal regulations issued pursuant to Pub. L. No. 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits; benefits for long-term care, nursing home care, home health care, or community based care; specified disease or illness coverage, hospital indemnity or other fixed indemnity insurance, or such other similar, limited benefits as are specified in regulations; medicare supplemental health insurance as defined under Section 1882(g)(1) of the federal Social Security Act; coverage supplemental to the coverage provided under Chapter 55 of Title 10 of the United States Code; or other similar limited benefit supplemental coverages.

(8) 'Provider' means an individual licensed pursuant to Chapter 9, 10A, 11, 26, 30, or 34 of Title 43 or Chapter 4 of Title 26, an institution as defined in Chapter 7 of Title 31, a physician organization, or a physician hospital organization that is acting exclusively as an administrator on behalf of a provider to facilitate the provider's participation in health care contracts. The term shall not include a physician organization or physician hospital organization that leases or rents the physician organization's or physician hospital organization's network to a third party.

(9) 'Provider network contract' means a contract between a contracting entity and a provider specifying the rights and responsibilities of the contracting entity and provider for the delivery of and payment for health care services to covered individuals.

(10) 'Third party' means an organization that enters into a contract with a contracting entity or with another third party to gain access to a provider network contract.

33-20C-2.

(a) This chapter shall not apply to provider network contracts for services provided to Medicaid, medicare, the state employees' health insurance plan authorized under Article 1 of Chapter 18 of Title 45, or State Children's Health Insurance Program (SCHIP) beneficiaries.

(b) This chapter shall not apply in circumstances where access to the provider network contract is granted to an affiliate entity under common control with or under the same brand licensee program as the contracting entity. Contracting entities shall, however, make the list of such affiliate entities available on a website or by other means. The affiliate entities shall have the same rights and responsibilities under the provider network contracts as the contracting entities.

(c) This chapter shall not apply to a contract between a contracting entity and a discount medical plan organization.

(d) This chapter shall not apply to the provision of any medical services for injuries covered by workers' compensation.

(e) This chapter shall not apply to a pharmacy benefits manager.

33-20C-3.

(a) Any person who commences business as a contracting entity shall register with the Commissioner within 90 days of commencing business in this state unless such person is licensed by the Commissioner as an insurer. Effective July 1, 2010, each person not licensed by the Commissioner as a contracting entity shall be required to register with the Commissioner within 90 days following July 1, 2010.

(b) Registration shall consist of the submission of the following information:

(1) The official name of the contracting entity, including any d/b/a designations used in this state;

(2) The mailing address and main telephone number for the contracting entity's main headquarters; and

(3) The name and telephone number of the contracting entity's representative who shall serve as the primary contact with the department.

(c) The information required by this Code section shall be submitted in written or electronic format, as prescribed by the Commissioner by rule or regulation.

(d) The Commissioner may, pursuant to rule or regulation, collect a reasonable fee for the purpose of administering the registration process.

33-20C-4.

(a) A contracting entity shall not grant access to a provider's health care services and contractual discounts pursuant to a provider network contract unless:

(1) The provider network contract specifically states that the contracting entity may enter into an agreement with a third party allowing the third party to obtain the contracting entity's rights and responsibilities under the provider network contract as if the third party were the contracting entity;

(2) The third party has a contractual right to access the contractual rates or discounts in the provider network contract, and such third parties shall reimburse the provider in accordance with the rates established in the provider network contract; and

(3) The third party accessing the provider network contract is contractually obligated to comply with all applicable terms, limitations, and conditions of the provider network contract.

(b) A contracting entity that grants access to a provider's health care services and contractual discounts pursuant to a provider network contract shall:

(1) Identify and provide to the provider, at the time a provider network contract is entered into with a provider, a written or electronic list of all third parties known at the time of contracting to which the contracting entity has or will grant access to the provider's health care services and contractual discounts pursuant to a provider network contract;

(2) Maintain an Internet website or other readily available mechanism, such as a toll-free telephone number, through which a provider may obtain a listing, updated at least every 90 days, of the third parties to which the contracting entity or another third party has executed contracts to grant access to such provider's health care services and contractual discounts pursuant to a provider network contract;

(3) Provide the third party who contracts with the contracting entity to gain access to the provider network contract with sufficient information regarding the provider network contract to enable the third party to comply with all applicable terms, limitations, and conditions of the standard provider network contract;

(4) Require that the third party who contracts with the contracting entity to gain access to the provider network contract identify the source of the contractual discount taken by the third party on each remittance advice (RA) or explanation of payment (EOP) form furnished to a health care provider when such discount is pursuant to the contracting entity's provider network contract; and

(5) Notify the third party that contracts with the contracting entity to gain access to the provider network contract of the termination of the provider network contract no later than 30 days after receipt of notice of the termination of the provider network contract; and require those that are by contract eligible to claim the right to access a provider's discounted rate to cease claiming entitlement to those rates or other contracted rights or obligations for services rendered after termination of the provider network contract. The notice required under this paragraph may be provided through any reasonable means, including, but not limited to written notice, electronic communication, or an update to an electronic data base or other provider listing.

(c) Subject to any applicable continuity of care requirements, agreements, or contractual provisions:

(1) A third party's right to access a provider's health care services and contractual discounts pursuant to a provider network contract shall terminate on the date the provider network contract is terminated;

(2) In accordance with the provider network contract, claims for health care services performed after the termination date of the provider network contract shall not be eligible for processing and payment; and

(3) Claims for health care services performed before the termination date of the provider network contract, but processed after the termination date, shall be eligible for processing and payment in accordance with the provider network contract.

(d) All information made available to a provider in accordance with the requirements of this chapter shall be confidential and shall not be disclosed to any person or entity not involved in the provider's practice or the administration thereof without the prior written consent of the contracting entity.

(e) Nothing contained in this chapter shall be construed to prohibit a contracting entity from requiring the provider to execute a reasonable confidentiality agreement to ensure that confidential or proprietary information disclosed by the contracting entity is not used for any purpose other than the provider's direct practice management or billing activities.

33-20C-5.

(a) A third party, having itself been granted access to a provider's health care services and contractual discounts pursuant to a provider network contract, that subsequently grants access to another third party shall be obligated to comply with the rights and responsibilities imposed on contracting entities under Code Sections 33-20C-4 and 33-20C-6.

(b) A third party that enters into a contract with another third party to access a provider's health care services and contractual discounts pursuant to a provider network contract shall be obligated to comply with the rights and responsibilities imposed on third parties under this Code section.

(c)(1) A third party shall provide to the contracting entity the location of an Internet website, or identify another readily available mechanism such as a toll-free telephone number, which the contracting entity will make available to the providers under the provider network contract accessed through the contracting entity. The website or other readily available mechanism shall identify the name of the person or entity to which the third party subsequently grants access to the provider's health care services and contractual discounts pursuant to the provider network contract.

(2) The website shall allow the providers under the contracting entity's provider network contract access to the information referenced in paragraph (1) of this subsection and shall be updated on a routine basis as additional persons or entities are granted access. The website shall be updated every 90 days to reflect all current persons and entities with access. Upon request, a contracting entity shall make updated access information available to a provider by telephone or through direct notification.

33-20C-6.

(a) It shall be an unfair trade practice for the purposes of Article 1 of Chapter 6 of this title to knowingly access or utilize a provider's contractual discount pursuant to a provider network contract without a contractual relationship with the provider, contracting entity, or third party, as specified in this chapter.

(b) A provider may refuse the discount taken on a remittance advice (RA) or explanation of payment (EOP) if the discount is taken without a contractual basis or in violation of paragraph (2) of subsection (b) of Code Section 33-20C-4 and subsection (c) of Code Section 33-20C-5 concerning the services referenced on the RA or EOP.

(c) A contracting entity shall not lease, rent, or otherwise grant to a third party access to a provider network contract unless the third party accessing the health care contract is:

(1) A payor or third party administrator or another entity that administers or processes claims on behalf of the payor;

(2) A preferred provider organization or preferred provider network, including a physician organization or physician-hospital organization; or

(3) An entity engaged in the electronic claims transport between the contracting entity and the payor that does not provide access to the provider's services and discount to any other third party.

33-20C-7.

A violation of this chapter shall be an unfair trade practice under Article 1 of Chapter 6 of this title and shall be subject to the same enforcement as provided in such article."

SECTION 2.

This Act shall become effective on July 1, 2010, and shall apply to provider network contracts entered into or materially amended on or after such date.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.